

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

21

INFORMATION

TOPIC

**Proposed Rule - Chapter 61, Water Quality Standards, Section 401
Certification of Section 404 Regional Permit 7 (RP 7)**

In July the department plans to bring a Notice of Intended Action to amend Chapter 61: Water Quality Standards to provide Section 401 water quality certification for Corps of Engineers (Corps) re-issued Regional Permit 7. Section 401 water quality certification is a state water quality agency's certification that a proposed activity will not violate state water quality standards.

Regional Permit 7 (RP 7) authorizes fill material placed in waters of the United States for bridge/road crossings. RP 7 was initially issued in 1979 and has been re-issued in 1985, 1989, 1995, 1999, and 2002. This permit is used for Iowa Department of Transportation (IDOT) and Iowa County and City Engineers' bridge/road crossing projects. Since this permit has been granted Section 401 Water Quality Certification in the past, the only change to Chapter 61 will be the effective date of the rule change.

The Corps issued the public notice for the re-issuance of RP 7 on February 4, 2008 and it expired on March 4, 2008. A copy of the February 4, 2008 Public Notice can be obtained from the Department of Natural Resources (DNR). The Corps received comments from several Native American Indian Tribes and from the State Historical Preservation Office (SHPO) regarding the "Archeological" paragraph. The Corps will be working with SHPO and the Tribes to draft acceptable language.

RP 7 was revised to be not only easier to understand but also contain more of the standard conditions that would be found in an individual permit for a bridge/road crossing project (e.g., the type of material that can be used as a temporary crossing, that wetland mitigation must be provided for any project impacting more than 0.10 acre of wetland, etc.) The revised RP 7 will allow the placement of 1,000 cubic yards of material to be "placed below the plane of ordinary high water or in wetland areas". The former RP 7 only allowed 500 cubic yards.

The IDOT had the opportunity to review and comment on the draft RP 7 prior to the Corps issuing the public notice with the final version of RP 7.

Charles Corell, Bureau Chief
Water Quality Bureau
June 10, 2008

Amend paragraph 61.2(2) “h” as follows:

h. This policy shall be applied in conjunction with water quality certification review pursuant to Section 401 of the Act. In the event that activities are specifically exempted from flood plain development permits or any other permits issued by this department in 567– Chapters 70, 71, and 72, the activity will be consistent with this policy. Other activities not otherwise exempted will be subject to 567–Chapters 70, 71, and 72 and this policy. The repair and maintenance of a drainage district ditch as defined in 567–70.2(455B,481A) will not be considered a violation of the antidegradation policy for the purpose of implementing Title IV of these rules. United States Army Corps of Engineers (Corps) nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50 as well as Corps regional permits 7, 33, and 34 as promulgated October 29, 2008 ~~March 19, 2007~~, are certified pursuant to Section 401 of the Clean Water Act subject to the following Corps regional conditions and the state water quality conditions:

(1) Side slopes of a newly constructed channel will be no steeper than 2:1 and planted to permanent, perennial, native vegetation if not armored.

(2) Nationwide permits with mitigation may require recording of the nationwide permit and pertinent drawings with the registrar of deeds or other appropriate official charged with the responsibility for maintaining records of title to, or interest in, real property and may also require the permittee provide proof of that recording to the Corps.

(3) Mitigation shall be scheduled for construction prior to, or concurrent with, the discharge of dredged or fill material into waters of the United States.

(4) For discharges of dredged or fill material resulting in the permanent loss of more than 1/10 acre of waters of the United States (including jurisdictional wetlands), a compensatory mitigation plan to offset those losses will be required. In addition, a preconstruction notice to the Corps of Engineers in accordance with general condition 27 will be required.

(5) For newly constructed channels through areas that are unvegetated, native grass filter strips, or a riparian buffer with native trees or shrubs a minimum of 35 feet wide from the top of bank must be planted along both sides of the new channel. A survival rate of 80 percent of desirable species shall be achieved within three years of establishment of the buffer strip.

(6) For single-family residences authorized under nationwide permit 29, the permanent loss of waters of the United States (including jurisdictional wetlands) must not exceed ¼ acre.

(7) For nationwide permit 46, the discharge of dredged or fill material into ditches that would sever the jurisdiction of an upstream water of the United States from a downstream water of the United States is not allowed.

(8) For projects that impact fens, bogs, seeps, or sedge meadows, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition).

(9) For nationwide permits when the Corps’ district engineer has issued a waiver to allow the permittee to exceed the limits of the nationwide permit, an individual Section 401 Water Quality Certification will be required (Iowa 401 Water Quality Certification condition). Written verification by the Corps or 401 certification by the state is required for activities covered by these permits as required by the nationwide permit or the Corps, and the activities are allowed subject to the terms and conditions of the nationwide and regional permits. The

department will maintain and periodically update a guidance document listing the special waters of concern. This document will be provided to the Corps for use in determining whether preconstruction notices should be provided to the department and other interested parties prior to taking action on applications for projects that would normally be covered by a nationwide or regional permit and not require preconstruction notice under nationwide permit conditions.